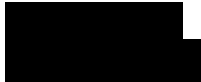




July 14, 2015

VIA EMAIL AND REGULAR MAIL

Jessica Rich, Director
Julia Ensor, Attorney, Division of Enforcement
Bureau of Consumer Protection
Federal Trade Commission
600 Pennsylvania Ave. N.W.
Washington, DC 20580



Re: Wal-mart Stores, Inc.'s False and Deceptive USA Representations

Dear Ms. Rich and Ms. Ensor:

Walmart's website – www.walmart.com – is replete with false and deceptive “Made in the USA” representations, which Truth in Advertising, Inc. (TINA.org) notified Walmart of on June 22, 2015.¹ In response, Walmart admitted there were inaccuracies on its website, said it was undertaking an “extensive quality assurance review” to eliminate what the company euphemistically called “coding errors,” and stated that the misrepresentations would be corrected within two weeks.² However, that deadline has come and gone, and Walmart's website continues to misrepresent the origin of products offered for sale on its website.

Labeling products as “Made in the USA” is an increasingly popular and effective marketing tool that persuades consumers to buy what's under the label. In fact, surveys in recent years show that 78% of Americans would rather buy American-made products than ones made abroad, and more than 80% are willing to pay more for “Made in the USA” products than their foreign counterparts.³

Capitalizing on this profitable marketing tactic, Walmart – the world's largest retailer – announced in 2013 that it would be buying \$250 billion in U.S. products over the next 10 years “in an effort to grow U.S. manufacturing and encourage the creation of U.S. jobs.”⁴ However, U.S. products are not the only items on Walmart.com being marketed as U.S.-made. The retail giant's website also markets products that are made in other countries as having U.S. origins.

Specifically, Walmart.com identifies products as made or assembled in the USA (either through the use of labels placed on the product images or Specifications beneath the images) but many of these representations are (1) inaccurate because they do not correctly describe the product's origin, and/or (2) problematic because they contain qualifying information that is not prominent, clear, and understandable. Each issue is addressed in turn.

I. Walmart's Use of False USA Representations

On June 29, 2015, TINA.org published a list of 100 Made in the USA misrepresentations found on Walmart's website.⁵ Though Walmart has corrected many of these misrepresentations, 35 inaccuracies still remain (as of July 13, 2015).⁶

Moreover, after Walmart's self-imposed deadline for correcting its USA marketing errors passed on July 9, 2015, TINA.org conducted a second sampling and identified another 100 errors on Walmart.com, none of which had been corrected as of July 13, 2015.

The 200 errors identified by TINA.org between June 22, 2015 and July 13, 2015, can be categorized into three groups:

Group 1: Products bearing inaccurate USA labels (i.e., the label conflicts with information regarding the products' origins contained on the product packaging or on the manufacturer's website). For example, the Step2 Push Around Sports Buggy bears a "Made in the USA" label on the Walmart website, while the Step2 website indicates that the product is "Made in USA of US and imported parts. Steering wheel made in China."⁷

Group 2: Products accompanied by inaccurate Specifications (i.e., the product origin information in the Specifications conflicts with information on the product packaging or on the manufacturer's website). For example, the Specifications for the Great Value Double Zipper Sandwich Bags indicate that the product is entirely made in the U.S., while the product packaging states that it is made in Thailand.⁸

Group 3: Products bearing USA labels that conflict with information contained in the Specifications on the same webpage. For example, the Pellon Stick-N-Tear Tear-Away Embroidery Stabilizer bears a "Made in the USA with imported parts" label, while the Specifications beneath the product image indicate the product is entirely made in the U.S.⁹

These errors directly impact consumers' ability to accurately identify U.S.-made products on the site, which in turn adversely affects consumers' purchasing decisions.

II. Walmart’s Use of USA Labels with Insufficient Disclosures

Walmart uses six different red, white, and blue USA labels that all look identical except for the small print above and below “USA.” These six labels appear as follows:¹⁰



The problem with these labels, as mentioned above, is that the qualifying language is not sufficiently prominent, clear, or understandable to prevent deception.¹¹

A. Walmart’s USA labels obscure the amount of foreign content.

In all six versions of the label, the most prominent language is “USA” – it is in the largest font, next to a blue star, double-underlined in red, and is in the center of the label. There can be no question that any average consumer viewing the labels will see “USA.” What is significantly less visible and prominent is the qualifying language that appears on five of the six versions of the label.

In search result pages, such as when searching the Walmart website for “Made in the USA” products, the legibility of the qualifying text below “USA” is illegible.¹² And the language above “USA” – either “Made in the” or “Assembled in the” – is marginal at best “due both to the text’s small size and the low contrast of light blue text on a white background.”¹³

“Thus, when viewed in search results, the label can be regarded as a *symbol* with a single meaning: ‘this product is made in the USA’. The problem is, the actual meaning of the label varies depending on precisely those aspects of it that many consumers cannot read in search results: the fine-print text above and below ‘USA.’”¹⁴

Even on individual product pages, where the labels are larger and thus more legible, the clear patriotic design of the labels is such that a quick glance would indicate that the product being viewed is a U.S. good. In addition, because only one variant of the label is shown on each product page, a consumer viewing a certain product may not realize there are other variants of the USA labels.¹⁵ Even if a consumer browses to another product page that shows another variant of the USA labels, that consumer may “not notice the difference because the consumer’s attention is focused on other aspects of the product.”¹⁶ In other words, consumers may mistakenly believe that all USA labels with a qualifier at the bottom indicate that the product is made with over 90% U.S. parts (if the first label they see and

read on the Walmart website contains this language) when, in reality, they may only contain just over 50% U.S. parts or, in some cases, no U.S. parts whatsoever.¹⁷

In short, no matter where a consumer views the USA labels, whether in search result pages or individual product pages, the most prominent features of all the labels is the acronym “USA” and the patriotic red, white, and blue design. The qualifying language above and below “USA” is not prominent, and thus consumers will miss it, which will lead to false perceptions about the origin of the products.¹⁸

B. Walmart’s USA labels are not clear or understandable.

In addition to being obscure, the qualifying language in the USA labels is not clear or understandable to a reasonable consumer.¹⁹ Even assuming consumers see and read the qualifiers on the labels, they will be left wondering what it means to be made “with over 50% U.S. parts” since that is not explained anywhere on the website. Does that mean 51% of its parts were made in the U.S.? Or 74%? Or perhaps 99%?²⁰ Similarly, what does it mean to be “Made in the USA with imported parts”? Is that different than being “Assembled in the USA”?

Neither Walmart’s labeling nor its other marketing provide any clarity or explanation.

Compounding the problem is the Specifications section for individual products on the Walmart website, which raises more questions and concerns, rather than providing any clarity.²¹ For example, the Lodge Logic 5 Quart Cast Iron Dutch Oven product bears the “Made in the USA” label (no qualifier) while the Specifications section indicates that the product was assembled in “USA or Imported” and that its components are from “USA or Imported.”²² Not only does the inconsistency between the label and the Specifications indicate that one of them is inaccurate, as explained above, the information also confuses consumers trying to determine the product’s origin. These concerns are only exacerbated when you compare products like the Lodge Logic Dutch Oven to ones like the Mainstays Microfiber Waterproof Mattress Pad, which bears the “Made in the USA with over 50% U.S. parts” label while its Specifications indicate that it was fully assembled in the U.S. from all U.S. components, apparently more American-made than the “Made in the USA” Lodge Logic Dutch Oven.²³

In short, Walmart’s USA labels not only contain obscure qualifying language, they are also confusing.

III. Conclusion

Walmart admitted that its website contains false made in the USA information, knows that such errors deceive consumers and violate the FTC Act, and has known about the problem for over three weeks. And yet, Walmart’s website still contains USA misrepresentations. As such, TINA.org strongly urges the FTC to take action to compel Walmart to remove all false and deceptive USA representations from its website.

Sincerely,



Laura Smith, Esq.
Legal Director
Truth in Advertising, Inc.



Bonnie Patten, Esq.
Executive Director
Truth in Advertising, Inc.

Cc: Doug McMillon, President and CEO
Leon Bechet, Associate General Counsel
Stephen Quinn, Chief Marketing Officer

¹ See Letter from L. Smith to D. McMillon, K. Robert, and S. Quinn, dated June 22, 2015, available at https://www.truthinadvertising.org/wp-content/uploads/2015/06/6-22-15-ltr-to-Walmart-from-TINA_Redacted.pdf.

² See Letter from C. Marsiglio to L. Smith, dated June 24, 2015, available at <https://www.truthinadvertising.org/wp-content/uploads/2015/06/Letter-to-TINA-from-Walmart.pdf>.

³ Nov. 15, 2012 Press Release, “U.S. and Chinese Consumers Willing to Pay More for Made in USA Products,” <https://www.truthinadvertising.org/wp-content/uploads/2015/07/BCG-Press-Release-U...or-Made-in-USA-Products.pdf>; Knowing Which Products are Truly Made in America: How to know which flag-waving products are true red, white, and blue, Consumer Reports, February 2013, <http://www.consumerreports.org/cro/magazine/2013/02/made-in-america/index.htm>.

⁴ Fortune Global 500, <http://fortune.com/global500/>; Walmart – U.S. Manufacturing, <http://corporate.walmart.com/global-responsibility/us-manufacturing>; Walmart Announces \$10 Million Fund to Spur Innovation and Support U.S. Manufacturing, <http://news.walmart.com/news-archive/2014/01/23/walmart-announces-10-million-fund-to-spur-innovation-and-support-us-manufacturing>; Walmart to Boost Sourcing of U.S. Products by \$50 Billion Over the Next 10 Years, <http://news.walmart.com/news-archive/2013/01/15/walmart-to-boost-sourcing-of-us-products-by-50-billion-over-the-next-10-years>; Walmart U.S. Manufacturing Innovation Fund, <http://corporate.walmart.com/global-responsibility/us-manufacturing/walmart-us-manufacturing-innovation-fund>.

Walmart hosted its latest “Made in the USA” Open Call and U.S. Manufacturing Summit on July 7 and 8, 2015, during which the company invited current and prospective suppliers to meet with Walmart’s representatives to pitch their wares in the hopes of having them sold at Walmart. See <http://news.walmart.com/videos/youtube/an-invitation-from-cindi-marsiglio-6ldlgjcj0u0> and http://mdjonline.com/view/full_story/26640273/article-Walmart-to-have--Made-in-the-USA-?instance=secondary_story_bullets_left_column.

⁵ See TINA.org’s Walmart Error Database, available at <https://www.truthinadvertising.org/walmart-database/>.

⁶ In some instances, Walmart corrected the false “Made in the USA” label, but ignored inaccurate product Specifications beneath the product image.

⁷ Compare <http://www.walmart.com/ip/Step2-Push-Around-Sport-Buggy-Car/11089997> to <http://www.step2.com/p/Push-Around-Sport-Buggy>. See also TINA.org’s Walmart Error Database at <https://www.truthinadvertising.org/walmart-database/>, Group 1, Row 36.

Note that all examples cited in this letter were present as of July 13, 2015.

⁸ See *id.*, Group 2, Row 9; <http://www.walmart.com/ip/Great-Value-Double-Zipper-Sandwich-Bags-200-count/22089973>.

⁹ See TINA.org’s Walmart Error Database at <https://www.truthinadvertising.org/walmart-database/>, Group 3, Row 80 and <http://www.walmart.com/ip/Pellon-Stick-N-Tear-Tear-Away-Embroidery-Stabilizer-12-x-6-Yards/21976571>.

¹⁰ A few products listed for sale at www.walmart.com (e.g., Jumbo Blocks Big City 40-Piece Play Set) bear an entirely red “Made in the USA” label. *See, e.g.*, <http://www.walmart.com/ip/Jumbo-Blocks-Big-City-40-Piece-Play-Set/34938916>. Similarly, some products (e.g., Evenflo Tribute Sport Convertible Car Seat, Maxwell) bear a gray label with an American flag that states “Made in the USA with US & Global Components.” *See, e.g.*, <http://www.walmart.com/ip/Evenflo-Tribute-Sport-Convertible-Car-Seat-Maxwell/21670123>. The design of these labels are not part of TINA.org’s complaint because they are visually different from the six discussed above. But note that the veracity of the labels and/or specifications for these particular products is an issue because they conflict. *See* TINA.org’s Walmart Error Database at <https://www.truthinadvertising.org/walmart-database/>, Group 3, Rows 57 and 84.

¹¹ According to the FTC, “[i]n order to be effective, any qualifications or disclosures [to U.S.-origin labeling] should be sufficiently clear, prominent, and understandable to prevent deception. Clarity of language, prominence of type size and style, proximity to the claim being qualified, and an absence of contrary claims that could undercut the effectiveness of the qualification, will maximize the likelihood that the qualifications and disclosures are appropriately clear and prominent.” Enforcement Policy Statement on U.S. Origin Claims, <https://www.ftc.gov/public-statements/1997/12/enforcement-policy-statement-us-origin-claims>.

¹² *See* J. Johnson’s Report, dated June 16, 2015, at 4, available at <https://www.truthinadvertising.org/wp-content/uploads/2015/06/Walmart-Made-in-USA-expert-report.pdf>. *See also* http://www.walmart.com/browse/seasonal/american-jobs/1085632_1104053/?refineresult=true (search result page that appears upon searching the Walmart website for “Made in the USA” and choosing the “Shop All” option).

Dr. Jeff Johnson is President and Principal Consultant at UI Wizards, Inc., a consulting firm that specializes in evaluating and designing graphical and Web user interfaces from the perspective of users. In 2014, Dr. Johnson presented at an FTC workshop devoted to native advertising. His presentation discussed how human visual perception impacts the ability to distinguish online content from advertising. TINA.org retained Dr. Johnson to provide a report that sets forth his expert opinion with respect to how visible, noticeable, discriminable, legible, intelligible, and reliable Walmart’s USA labeling is. After Dr. Johnson issued his report, Walmart made some changes to its website so some of the examples discussed in the report have since changed but the issues remain the same.

¹³ *Id.*

¹⁴ *Id.* at 5.

¹⁵ *Id.* at 8.

¹⁶ *Id.*

¹⁷ TINA.org’s discovery of Walmart’s “Made in the USA with imported parts” label was made after Dr. Johnson’s expert report was issued. Therefore, this particular label is not discussed in the report.

¹⁸ Apparently aware of this issue, Walmart stated to TINA.org that it would be replacing the qualified Made in the USA labels with new labels that include larger and more visible qualifying

language. However, as of July 13, 2015, the original, deceptive labels were still being used on Walmart.com.

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.* at 9-12.

²² *See* <http://www.walmart.com/ip/Lodge-Cast-Iron-5-qt.-Dutch-Oven/5969631>.

²³ *See* <http://www.walmart.com/ip/Mainstays-Microfiber-Waterproof-Mattress-Pad/11963441>. *See also* J. Johnson's Report, at 9.